

Message Text

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ORIGIN INT-08

INFO OCT-01 RSC-01 ADP-00 EA-11 IO-13 L-03 /037 R

66651

DRAFTED BY:INT:WDHOLEMAN:FFGRAMBO

APPROVED BY:DIR OF TERRITORIAL AFFAIRS:SS CARPENTER

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P 272127Z JUL 73

FM SECSTATE WASHDC

TO HON EDWARD E JOHNSTON

HIGH COMMISSIONER OF THE TRUST TERRITORY

OF THE PACIFIC ISLANDS

SAIPAN MARIANA ISLANDS 96950

UNCLAS STATE 148332

E.O. 11652: N/A

TAGS: PGOV, TQ

SUBJ: SUBPOENA OF YAMADA AND NEAS

THIS IS A FOLLOW UP TO TEL CONV WITH DHC COLEMAN REGARDING THE
SUBPOENAING OF YAMADA AND NEAS, BY THE JOINT COMMITTEE ON
FUTURE STATUS. AFTER CONSULTATION WITH THE SOLICITOR'S OFFICE,
WE SUBMIT THE FOLLOWING:

1. IN OUR OPINION THE CONGRESS OF MICRONESIA DOES HAVE
SUBPOENA POWER OVER THE PERSONNEL HERE INVOLVED. SECRETARIAL ORDER
NO. 2918, AS AMENDED, DELIMITS THE EXTENT AND NATURE OF THE
AUTHORITY OF THE GOVERNMENT OF THE TTPI. IT AUTHORIZES AND
ESTABLISHES THREE SEPARATE BRANCHES OF GOVERNMENT, NAMELY,
THE EXECUTIVE, LEGISLATIVE, AND JUFICIAL. PART III OF THAT ORDER
RELATES TO THE LEGISLATIVE AUTHORITY OF THE CONGRESS OF
MICRONESIA. SECTION 16(I), PART III, PROVIDES IN PART THAT THE
CONGRESS OF MICRONESIA SHALL HAVE THE POWER TO INSTITUTE
AND CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS TO WITNESS AND OTHER
PARTIES CONCERNED, AND ADMINISTER OATHS. WE FIND NOTHING IN
THE ORDER OR IN THE IMPLEMENTING TTPI LAWS (2 TTC 251 ET
SEQ., AND P.L. 5-36, APRIL 5, 1973) WHICH EXCLUDES THESE PERSONNEL
FROM THE APPLICABILITY OF THE PERTINENT LAWS. FOR A COMMITTEE
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OF THE CONGRESS OF MICRONESIA TO HAVE SUBPOENA AUTHORITY OVER

THE PERSONNEL HERE INVOLVED WE MUST ASSUME THAT THE COMMITTEE HAS BEEN ESTABLISHED PURSUANT TO THE LAWS OF THE TTPI, THAT IT IS PROCEEDING WITHIN THE SCOPE OF ITS AUTHORITY AND IN ACCORDANCE WITH LOCAL LAW AND RULES OF THE CONGRESS OF MICRONESIA AND ITS OWN RULES. IF THE CRITERIA ARE MET AND THE SUBPOENAS PROPERLY PREPARED AND SERVED, THE HIGH COMMISSIONER OR HIS STAFF, AT HIS DIRECTION MAY DECLINE TO RESPOND TO THE SUBPOENA IF THE HIGH COMMISSIONER DETERMINES THAT DISCLOSURE OF THE INFORMATION SOUGHT IS NOT IN THE PUBLIC INTEREST. THIS IS AN EXCHANGE OF EXECUTIVE PRIVILEGE. HOWEVER, THIS IS DONE AT THE RISK OF COURT ACTION, NAMELY, CONTEMPT. EVEN SO, COURTS RECOGNIZE AND RESPECT THIS PRIVILEGE SINCE IT FLOWS FROM THE CONCEPT OF A SEPARATION OF POWERS OF THE THREE BRANCHES OF GOVERNMENT. KILBOURN V. THOMPSON, 103 U.S. 168; APPEAL OF HARTRANFT, 85 PA. 433; COMMITTEE ON RESOURCES AND DEVELOPMENT V. BOWLES, 5. T.T.R. 577.

2. IN DETERMINING WHETHER EXECUTIVE PRIVILEGE SHOULD BE EXERCISED RELATING TO AN OFFICIAL DOCUMENT, SUCH AS THAT HERE, ARGUMENT SHOULD BE MADE AGAINST DISCLOSURE BECAUSE (1) THE PAPER CONSISTS OF OR INCLUDES INCOMPLETE MATERIAL, IT IS A WORKING PAPER AND PREMATURE RELEASE COULD CONFUSE THE PUBLIC, AND (2) THE PAPER IS AN INTEROFFICE OR INTRADEPARTMENTAL MEMORANDUM WHICH DOES NOT REPRESENT A FINAL OFFICIAL POSITION.

3. IN REGARD TO A CONTEMPT ACTION, WE ARE OF THE OPINION THAT THE TTPI COURT HAS JURISDICTION UNDER THE PROVISIONS OF ITS CODE. AT THE COURT STAGE THE MATTER BECOMES JUDICIAL AND NOT LEGISLATIVE. THEREFORE THE USUAL STANDARDS OF CRIMINAL LAW MUST BE OBSERVED, INCLUDING PROPER ALLEGATION AND PROOF OF ALL THE ESSENTIAL ELEMENTS OF THE OFFENSE. GOJACK V. UNITED STATE, 384 U.S. 702 (1965). IN THIS REGARD WE WOULD INVITE YOUR ATTENTION TO THE RULES OF EVIDENCE SET FORTH IN THE PREFACE OF THE TTPI CODE. IN PARTICULAR, RULE 34 THEREOF DEFINES OFFICIAL INFORMATION AND THE BASIS FOR A WITNESS NOT DISCLOSING SUCH. WE CONSIDER THE PAPER HERE INVOLVED AS CONTAINING OFFICIAL INFORMATION AS THE TERM IS DEFINED IN RULE 34. ALSO, THE WITNESS SHOULD REQUEST THIS PRIVILEGE BECAUSE DISCLOSURE OF THE INFORMATION WILL BE HARMFUL TO THE GOVERNMENT, THAT IS, IT IS A WORKING UNCLASSIFIED

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CARPENTER SENDS. ROGERS

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 27 JUL 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE148332
Document Source: CORE
Document Unique ID: 00
Drafter: INT:WDHOLEMAN:FFGRAMBO
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t1973077/aaaaaema.tel
Line Count: 110
Locator: TEXT ON-LINE
Office: ORIGIN INT
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 17 DEC 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <17-Dec-2001 by thomasv0>; APPROVED <12 MAR 2002 by izenbei0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SUBPOENA OF YAMADA AND NEAS THIS IS A FOLLOW UP TO TEL CONV WITH DHC COLEMAN REGARDING THE
TAGS: PGOV, TQ
To: HICOMTERPACIS SAIPAN MULTIPLE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005